

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of  
the Commission's Forfeiture  
Policy Statement and  
Amendment of Section 1.80  
of the Rules to Incorporate  
the Forfeiture Guidelines

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CI Docket No. 95-6

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COMMENTS

1. MobileMedia Communications, Inc. ("MobileMedia"), by its attorney, hereby submits its Comments in the above-captioned proceeding which sets forth guidelines for assessing FCC forfeitures.

BACKGROUND

2. In United States Telephone Association v. FCC, 28 F. 3d 1232 (D.C. Cir. 1994), the United States Court of Appeals for the District of Columbia Circuit set aside the Commission's decision establishing guidelines for assessing FCC forfeitures. In response, to the Court's ruling, the FCC initiated the instant proceeding.

THE COMMISSION'S PROPOSAL

3. The Commission proposes to adopt guidelines identical to those previously adopted without benefit of a rulemaking proceeding which were overturned by the Court. In justifying the guidelines, the Commission states that one of the primary benefits "would include the comparable treatment of similarly situated offenders." Id. at para. 3. In this regard, the

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Commission's requested comments "on the use of different base forfeiture amounts for similar violations in different services in light of the maximum forfeiture amounts for different services set forth in the statute. See 47 U.S.C. §§ 503 (b)(2)(A)-(C)." Id. at para. 4. Thereafter, the Commission states that "We continue to believe that ultimately every decision must be based on specific facts and equities at issue, taking into account the factors set forth in Section 503(b)(2)(D) of the Act, 47 U.S.C. § 503 (b)(2)(D)." Id. at para 5.

4. In the proposed guidelines, the Commission sets forth the type of violation and the maximum amount of forfeiture for each category of licensee. Specifically, the categories of licensees are labeled as BC/CABLE, CC and OTHER. In footnote 2 to the guidelines, the Commission further describes the categories of offenders as broadcasters and cable operators (BC/CABLE), common carriers (CC) and all others (OTHER). However, contrary to the Commission's interest to treat licensees equitably, the Commission proposes that common carriers (CC) be subjected to four times the forfeiture amounts for broadcasters/cable operators (BC/CABLE) and ten times the forfeiture amount for all others (OTHERS)<sup>1</sup>.

**COMMERCIAL MOBILE RADIO AND PERSONAL COMMUNICATIONS  
SERVICES SHOULD BE CONSIDERED AS OTHER**

5. When the Commission first adopted its forfeiture guidelines, which it reiterates here verbatim,<sup>2</sup> Commercial Mobile Radio Service (CMRS) licensees and Personal Communication Service (PCS) licensees were not in existence. It was not until 1994 that the

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<sup>1</sup> Not only are the differences larger in terms of percentages, but they are also significantly larger in terms of absolute dollars. For the same violation, a CC can be fined \$100,000, a BC/CABLE \$25,000 and OTHER \$10,000.

<sup>2</sup> See Policy Statement, Standards for Assessing Forfeitures, 6 FCC Rcd 4695 (1991), recon. denied, 7 FCC Rcd (1992), revised, 8 FCC Rcd 6215 (1993).

Commission established CMRS and PCS services and new rules for them. In recognition of this new status, the Commission placed regulation of these services under a newly formed Wireless Telecommunications Bureau and specifically excluded them from regulation by the Common Carrier Bureau. In fact, the Common Carrier Bureau has no authority whatsoever over CMRS and PCS licensees and does not regulate them in anyway. When Congress provided authority to the Commission to increase forfeitures, it had not contemplated that the new forfeiture amounts be applied to CMRS and PCS licenses. Likewise, the Commission itself in its NPRM never considered that CMRS and PCS are new categories of licensees and it makes no mention of them whatsoever in the instant NPRM. Thus, in order for the Commission to consider forfeiture guidelines for CMRS and PCS licensees, it must issue a Further NPRM addressing them specifically.

6. If the Commission decides not to issue a Further NPRM, it should include CMRS and PCS licensees and applicants in the OTHER category. Since many of the CMRS and PCS services are newly licensed, they should not be subjected to the same forfeiture amounts as established common carriers such as AT&T, MCI and the Regional Bell Holding Companies. Moreover, since CMRS and PCS licensees are not regulated by the Common Carrier Bureau, they cannot have large forfeiture amounts imposed on them without a rational explanation to include them in the CC category instead of the OTHER category. The OTHER category was established for services which were not regulated by either the Mass Media Bureau or the Common Carrier Bureau. Since CMRS and PCS licensees and applicants are regulated solely by the Wireless Telecommunications Bureau, then the proper forfeiture category is OTHERS -- it cannot be either BC/CABLE or CC. However, if the Commission desires to place CMRS

and PCS licensees in the CC category, it must first conduct a separate rulemaking proceeding to so do.

### **LOWER FORFEITURE AMOUNTS SHOULD BE USED**

7. Even if the Commission arbitrarily places CMRS and PCS licensees in the CC category, the forfeiture amount guidelines for CCs must be reduced. The forfeiture amounts for CCs are outrageously high compared to those for BC/CABLE and OTHERS for the identical infractions. For example, a broadcast television station licensee which operates on a one MHz channel that covers a large geographic area is fined four times less than a paging licensee that is licensed for one 25 kHz channel that covers a small geographic area.<sup>3</sup> The Commission cannot treat similarly situated licensees differently without first providing a rational explanation even though Congress permits, but does not require higher forfeiture amounts for common carriers.

8. In fact, in almost all cases, the discrepancy in forfeiture amounts proposed by the Commission for CCs versus BC/CABLE and OTHERS is non-sensical. Not only are there incredibly large differences among the different kinds of licensees in each category, but there are also large and small companies in each category and the same offenders can be licensed in all three categories. For example, landline common carriers, such as U. S. West, own interests in cable companies (Time Warner) whose owners also have stakes in broadcast licensees. Likewise, although AT&T is the biggest interexchange and cellular common carrier, it is only the ninth largest paging company. Moreover, Federal Express, with its nationwide private two-way radio messaging system, would be subject to the lower forfeiture amounts listed in the

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<sup>3</sup> There are forty 25 kHz channels in one MHz of spectrum bandwidth.

OTHER category. On the other hand, a small, local two-way manual dispatch CMRS licensee would be fined the same amount as AT&T, ten times more than Federal Express and four times more than CBS, NBC and ABC for the identical violation. Clearly, the Commission cannot impose such inequitable results without a reasoned explanation and it has failed to provide one in its NPRM.

9. The Commission is obligated to establish forfeiture guidelines that are rational and equitable. However, it has not done so in its proposal. In fact, its NPRM is fatally defective because it has not done so. In order to cure this defect, the Commission should issue a Further NPRM which sets forth equitable forfeiture amounts based on appropriate explanations for differences among categories for licensees.

### CONCLUSION

10. In view of the foregoing, MobileMedia urges the Commission to issue a Further NPRM in this proceeding as indicated above or revise the proposed guidelines to include CMRS and PCS licensees in the OTHER category.

Respectfully submitted,

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